

The Odisha Gazette



EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1647 CUTTACK, SATURDAY, AUGUST 18, 2012/SRAVANA 27, 1934

LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 4th August 2012

No. 7006—li/1(B)-163/1998(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th June 2012 in Industrial Dispute Case No. 197 of 1998 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Agriculture Extension, Bhubaneswar and its workman Shri Pradeep Kumar Dhal was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 197 OF 1998

Dated the 5th June 2012

Present :

S.A.K.Z. Ahamed,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Management of Agriculture .. First Party—Management
Extension, Bhubaneswar

And

Their Workman .. Second Party—Workman
Shri Pradeep Kumar Dhal

Appearances :

For the First Party—Management .. Shri Susanta Dash, Advocate
.. Shri A. K. Sahoo, Advocate

For the Second Party—Workman .. Shri Subrat Mishra, Advocate
.. Mrs. Mansai Parhi, Advocate

AWARD

The Government of Odisha in the Labour & Employment Department in exercise of powers conferred upon them by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Court for adjudication vide Order No. 13717—li/1(B)-163/1998-LE., dated the 1st December 1998.

“Whether the action of the Principal, Institute on Management of Agriculture Extension, Bhubaneswar in terminating the services of Shri Pradeep Kumar Dhal, Watchman, by way of refusal of employment with effect from the 18th July 1992 is legal or justified ? If not, what relief he is entitled to ?”

2. The case of the workman in brief, as set out in his statement of claim is that he joined his service as a Watchman under the management on the 15th July 1991 on a monthly wage of Rs. 750. The management terminated the service of the workman with effect from the 17th July 1992 arbitrarily without complying the provisions of Section 25-F of the Industrial Disputes Act, 1947. But the time of termination of his service, the workman had rendered more than 240 days of continuous work under the management. The workman had worked quite satisfactorily. During the period of his service, there was never any charge against him. After termination of his service the workman raised an industrial dispute which started a conciliation proceeding by the Conciliation Officer and when the conciliation did not succeed the present reference was made to this Court for adjudication of this case.

3. On the other hand, the management filed written statement on dated the 7th April 2004 stating that the present case is not maintainable, barred by limitation and the management is not an industry under the provisions of the Industrial Disputes Act, 1947. So also, the second party is not a workman under the said Act. The management has also stated in his written statement that the Grama Sevak Talim Kendra has been converted to the Institute on Management of Agricultural Extension from the 2nd October 1998 and during the 15th July 1991 to the 17th July 1992 a training programme for the ladies have been conducted in the said Grama Sevak Talim Kendra for a period of one year under the head of the Director of Agriculture and Food Production, Odisha and at the relevant time the workman was simply entrusted the duty of watch and ward of the ladies hostel which was functioning temporarily for the period of one year and for that no appointment order was issued in favour of the workman and since the workman was fully aware his engagement for a limited period, the question of terminating the service of the workman does not arise as because the workman has not come to this Court with a clean hand. In view of the above backgrounds, the management has prayed that the reference should be answered against the workman.

4. In view of the above pleadings of the parties, the following issues are settled :

ISSUES

- (i) "Whether the action of the Principal, Institute on Management of Agriculture Extension, Bhubaneswar in terminating the services of Shri Pradeep Kumar Dhal, Watchman, by way of refusal of employment with effect from the 18th July 1992 is legal or justified ?
- (ii) If not, what relief he is entitled to ?"

5. In order to substantiate his claim, the workman has examined himself as W. W. 1 and proved the Xerox copy of experience certificate under the cover of Ext. 1. On the other hand, the management has examined its Deputy Director as M.W. 1 but has not proved any document in support of its case.

6. Before going to discuss the evidence in details, it is pertinent to mention here that as per the direction made by the Hon'ble High Court of Odisha, Cuttack in W.P.(C) No. 20145/2011 vide Order No. 5 , dated the 30th January 2012, both the parties appeared and adduced evidence on their behalf in the light of submission made by the Hon'ble Court.

7. During course of hearing, the W.W. 1 in his affidavit evidence has stated that he joined in the service under the management as Watchman on a monthly wage of Rs. 750 with effect from the 15th July 1991 and worked as such till the 17th July 1992 when the management terminated his service by way of oral refusal of further employment. He has further stated that no charge has been framed against him and no enquiry has been conducted prior to refusal of his employment and at the same time he has stated that the management did not issue any prior notice and did not give any notice pay and retrenchment compensation before his service was terminated. He has further stated that the management had retained the services of some junior Watchmen in his place and he denied the allegation of the plea taken by the management in its written statement. The workman has not filed any document during the course of hearing after the case was remanded to this Court by the Hon'ble High Court of Odisha, Cuttack. But at the same time, on perusal of the case record it appears that the workman has filed a document, i.e., one experience certificate and proved the same as Ext. 1 on the earlier occasion. On the other hand, the management adduced one evidence, i.e., Shri Raj Kishore Nayak and corroborated the facts stated in its written statement. Nothing has been elicited from the mouth of the M.W. 1 to discard his testimony.

8. On perusal of Ext. 1, xerox copy of one experience certificate, it appears that the same was executed by the Principal, Grama Sevak Talim Kendra, Bhubaneswar on the 9th November 1996 in favour of the workman. Even if, this document Ext. 1 is accepted in its totality, it only shows that the workman was working on a monthly contract basis as Watchman for the ladies hostel of the Institution, i.e., Grama Sevak Talim Kendra. From this, it appears that Ext. 1 does not prove in itself

that the service rendered by the workman was continuous as defined in Section 25-B of the Industrial Disputes Act, 1947. There is no material on record to show that the workman was in continuous service as defined in Section 25-B on the Industrial Dispute Act, 1947. No doubt, the onus heavily lies on the workman to prove that he was in continuous service as defined in Section 25-B of the Industrial Disputes Act, 1947. In the instant case except oral evidence of the workman coupled with experience certificate Ext. 1 does not lead to any definite conclusion that the workman had worked under the management for 240 days in the period of 12 calendar preceding to the date of his termination as defined in Section 25-F of the Industrial Disputes Act, 1947. Therefore, it cannot be said that the workman is entitled to get the benefits of Section 25-F of the Industrial Disputes Act, 1947.

9. Hence Ordered :

That the action of the Principal, Indusitute on Management of Agriculture Extension, Bhubaneswar in terminating the services of Shri Pradeep Kumar Dhal, Watchman, by way of refusal of employment with effect from the 18th July 1992 is legal and justified. The workman Shri Dhal is not entitled to get any relief as prayed for.

The reference is answered accordingly.

Dictated and corrected by me.

S.A. K.Z. AHAMED
5-6-2012
Presiding Officer
Labour Court, Bhubaneswar

S.A. K.Z. AHAMED
5-6-2012
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
M. R. CHOUDHURY
Under-Secretary to Government